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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 85/2016 and CM Nos. 4574-4577/2016

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms Shobhana Takiar and Mr Udayan
Khandelwal, Advs for DDA

versus

PINKI PUNIA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **23.02.2016**

1. The Delhi Development Authority (DDA) appeals against two judgments dated 29.04.2013, whereby the petition filed by the respondent (then the writ petitioner) was allowed and the subsequent order of 26.05.2015, whereby the Review Petition filed by it was rejected. During the interim period, it had preferred an appeal (LPA No.176/2014), which was permitted to be withdrawn. The said appeal was allowed to be withdrawn and the DDA was permitted to move an application before the learned Single Judge on facts which were not dealt with by him while disposing of the writ petition.

2. The question involved is the eligibility and entitlement of the respondent/writ petitioner who was a registrant and applicant in one

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of the Schemes published by the DDA.

3. The undisputed facts are that the DDA conducted a draw of lots on 16.12.2008, in which the petitioner was not successful. She was, however, kept in the Waiting List at Serial No. 9 by the DDA in the category of Scheduled Caste applicants. The purpose of maintaining such list was to allot flats which were subsequently surrendered within a period of 09 months after allotment on account of cancellation. It is a matter of record that draw of lots were held on 16.12.2008, however, the actual allotments were made only in December, 2009 onwards. The DDA issued another Scheme in which it proposed to allot 172 flats which were surrendered, they being part of 2008 Scheme originally. The petitioner approached this Court complaining that such action was impermissible and arbitrary because her rights as a wait-listed candidate were prejudiced. This submission was accepted by the learned Single Judge in the first impugned order of 29.04.2013. The learned Single Judge *inter alia* concluded as follows:-

“7. Referring to the stipulation that “the waiting list is created just to ensure that the surrendered flats (if any) are allotted to same registrants rather than keeping them vacant and the list will be valid only for 9 months, hence it doesn’t create any right of the waitlisted registrants if they fail to get a flat from the surrendered ones. If successful, the cost would be the cost of the flat on the date the demand cum-allotment letter is issued”, the learned counsel for the respondent/DDA contended that

DDA could, in its discretion, include these surrendered flats in the next scheme instead of holding the draw for the waitlisted applicants.

I, however, find no merit in the contention made by learned counsel for the respondent/DDA. The only reasonable interpretation which can be given to the above referred stipulation is that if the draw in terms of the aforesaid scheme was held by DDA and a waitlisted registrant was not successful in obtaining allotment in such a draw, that would not create any legal right in his favour to seek allotment of another flat from DDA merely on the strength of waiting list in which his name was included. This clause, in my view, does not give discretion to DDA not to hold the draw of lots at all, despite the waiting list having been prepared and certain flats having been surrendered within a period of six months from the date of issue of the demand letters. These surrendered flats, in my view, could have been included in the next scheme only in the event of the waitlisted applicants not depositing the registration money within 15 days which was to be given to them by DDA, but DDA was certainly obliged to hold the draw after six months from the date of issue of the demand letter and call upon the waitlisted applicants to deposit their registration money within a period of 15 days. The name of only those who were to deposit the registration money within the stipulated period of 15 days were required to be included in the draw of lots envisaged in the scheme for the benefit of the waitlisting applicants.

8. DDA having invited applications and then prepared a waiting list for the unsuccessful applicant in terms of Clause 7 (III) of the scheme cannot be allowed to get out of its legal and contractual obligation envisaged in the scheme and therefore the inclusion of the flats, which

were surrendered within the period of six months from the date of issuance of demand letters, in the scheme of 2010, without first calling upon the waitlisted applicants to deposit the registration money, was contrary to the provisions of 2008 scheme. Even otherwise, it would be unethical and unreasonable on the part of the DDA to prepare waiting list of unsuccessful candidates and then not hold any draw for them without there being any justification for adopting such a course of action.”

4. The learned Single Judge by the subsequent order of 26.05.2015 negated the DDA's contention that the earlier final order had ignored the circumstance that the allotment letters could be initially issued within time on account of ongoing investigation by the Economic Offences Wing.

5. Learned counsel for the DDA urges that the significance of the ongoing investigations appears to have been lost sight of by the learned Single Judge who was apprised of it—both in the counter-affidavit in the original proceedings as well as in the review petition. It is stated that registrant could not claim as a matter of entitlement or right that her name would be maintained in the waiting list and considered against the surrendered flats. Given that the allotments were made in December, 2009, the Waiting List exhausted itself after 9 months. The intervening event of the investigation by the Economic Offences Wing only delayed allotments to those who were admittedly successful. Consequently, submitted counsel, the writ petitioner could not claim any advantage on this aspect.

6. This Court has carefully considered the submissions and also

the record. It is evident that no allotment was made before December, 2009 though the draw of lots was held in December, 2008. Therefore, even according to the DDA's Scheme itself, the wait-list was to have a life for 09 months after the issuance of the allotment letters. The DDA could not have, in the opinion of this Court, taken advantage of the ongoing investigations which was initiated on account of irregularities to which some individual—either an officer or an employee of the Organization was a party. As against this, the allottees as well as those in the Waiting List were completely innocent. In these circumstances, this Court is of the opinion that there is no error in the reasoning and findings of the learned Single Judge—both in the impugned judgment as well as in the subsequent order dismissing the review petition.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 23, 2016

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